

AMENDED IN ASSEMBLY MAY 3, 2011

AMENDED IN ASSEMBLY APRIL 5, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 775**

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**Introduced by Assembly Member Galgiani**

(Principal coauthor: Senator Berryhill)

**(Coauthors: Assembly Members Bill Berryhill, Cook, and Jeffries)**

(Coauthor: Senator Strickland)

February 17, 2011

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An act to ~~add Section 25503.34 to~~ *amend Section 25503.24* of the Business and Professions Code, relating to alcoholic beverages.

### LEGISLATIVE COUNSEL'S DIGEST

AB 775, as amended, Galgiani. ~~Alcoholic beverages: advertising.~~  
*Alcoholic beverages: tied-house restrictions.*

*Existing law prohibits specified holders of alcoholic beverage licenses from having specified relationships with an on-sale alcoholic beverage licensee, with limited exceptions. Existing law permits a manufacturer, winegrower, rectifier, distiller, distilled spirits wholesaler, or any agent of those licensees, to conduct market research and, in connection with that research, to purchase from licensed off-sale retailers data, regarding purchases and sales of alcoholic beverage products, at the customary rates that those retailers sell similar data for nonalcoholic beverage products, provided that a licensed retailer shall not be obligated to purchase or sell the alcoholic beverages of the manufacturer, winegrower, rectifier, or distiller.*

*This bill would additionally include a distilled spirits wholesaler in the provision prohibiting a licensed retailer from being obligated to*

*purchase or sell the alcoholic beverages of the licensee conducting the market research.*

*Existing law makes it a misdemeanor for a licensee, subject to these provisions, to violate existing provisions relating to the purchase of that advertising time or space.*

*This bill would impose a state-mandated local program by expanding the licensees subject to these criminal provisions.*

~~Existing law generally restricts certain alcoholic beverage licensees, including manufacturers and winegrowers, from paying, crediting, or compensating a retailer for advertising in connection with the advertising and sale of alcoholic beverages.~~

~~This bill would expressly authorize a beer manufacturer, the holder of a winegrower's license, a California winegrower's agent, a distilled spirits rectifier, a distilled spirits manufacturer, and a distilled spirits manufacturer's agent to provide sponsorship funds, purchase advertising space or time, or furnish, give, lend, rent, or sell specified items to a holder of not less than 15 but not more than 65 off-sale licenses within this state in connection with live entertainment events at specified locations in the Counties of San Joaquin, San Luis Obispo, and Stanislaus, as provided.~~

~~This bill would make legislative findings and declarations as to the necessity of a special statute for the counties described above.~~

~~The Alcoholic Beverage Control Act provides that a violation of its provisions is a misdemeanor, unless otherwise specified.~~

~~This bill, by including provisions that would be subject to those existing criminal sanctions, would impose a state-mandated local program.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 *SECTION 1. Section 25503.24 of the Business and Professions*
- 2 *Code is amended to read:*

25503.24. (a) Notwithstanding any other provision of this chapter, any manufacturer, winegrower, rectifier, distiller, distilled spirits wholesaler, or any officer, director, agent, or representative of any of those entities, may conduct market research and, in connection with that research, the entity conducting the market research may purchase from licensed off-sale retailers data regarding purchases and sales of alcoholic beverage products at the customary rates that those retailers sell similar data for nonalcoholic beverage products subject to the following limitations:

(1) No licensed retailer shall be obligated to purchase or sell the alcoholic beverage products of that manufacturer, winegrower, rectifier, ~~or~~ distiller, *or distilled spirits wholesaler*.

(2) No retail premises shall participate in more than one research project conducted by any single manufacturer, winegrower, rectifier, distiller, or distilled spirits wholesaler during a calendar year. A research project may involve multiple onsite surveys.

(3) Nothing in this section shall allow a licensed retailer to require a manufacturer, winegrower, rectifier, distiller, or distilled spirits wholesaler to conduct any market research as a condition for selling alcoholic beverage products to that licensed retailer.

(b) Any holder of a beer manufacturer's license or winegrower's license who, through coercion or other illegal means, induces, directly or indirectly, a holder of a beer or wine wholesaler's license to fulfill obligations entered into pursuant to subdivision (a) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the market research or time involved in the project, whichever is greater, plus ten thousand dollars (\$10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(c) Any retail licensee who, directly or indirectly, solicits or coerces a holder of a beer or wine wholesaler's license to solicit a beer manufacturer, or holder of a winegrower's license to fulfill obligations entered into pursuant to subdivision (a) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the market research or time involved in the project, whichever is greater, plus ten thousand dollars

1 (\$10,000), or by both imprisonment and fine. The person shall also  
2 be subject to license revocation pursuant to Section 24200.

3 (d) For the purposes of this section, “beer manufacturer”  
4 includes any holder of a beer manufacturer’s license, any holder  
5 of an out-of-state beer manufacturer’s certificate, or any holder of  
6 a beer and wine importer’s general license.

7 *SEC. 2. No reimbursement is required by this act pursuant to*  
8 *Section 6 of Article XIII B of the California Constitution because*  
9 *the only costs that may be incurred by a local agency or school*  
10 *district will be incurred because this act creates a new crime or*  
11 *infraction, eliminates a crime or infraction, or changes the penalty*  
12 *for a crime or infraction, within the meaning of Section 17556 of*  
13 *the Government Code, or changes the definition of a crime within*  
14 *the meaning of Section 6 of Article XIII B of the California*  
15 *Constitution.*

16 ~~SECTION 1. Section 25503.34 is added to the Business and~~  
17 ~~Professions Code, to read:~~

18 ~~25503.34. (a) Notwithstanding any other provision of this~~  
19 ~~chapter, a beer manufacturer, the holder of a winegrower’s license,~~  
20 ~~a California winegrower’s agent, a distilled spirits rectifier, a~~  
21 ~~distilled spirits manufacturer, and a distilled spirits manufacturer’s~~  
22 ~~agent may provide sponsorship funds, purchase advertising space~~  
23 ~~or time, or furnish, lend, rent, or sell equipment, fixtures, supplies,~~  
24 ~~decorations, paintings, or signs, directly or indirectly, to or from~~  
25 ~~the holder of not less than 15 but not more than 65 off-sale licenses~~  
26 ~~within this state.~~

27 ~~(b) The activities described in subdivision (a) may only be in~~  
28 ~~connection with live entertainment events at the following locations~~  
29 ~~in the Counties of San Joaquin, San Luis Obispo, and Stanislaus:~~

30 ~~(1) An outdoor stadium with a fixed capacity of at least 25,000~~  
31 ~~seats within the City of Stockton in San Joaquin County.~~

32 ~~(2) An indoor arena with a fixed seating capacity of at least~~  
33 ~~4,000 seats within the City of Stockton in San Joaquin County.~~

34 ~~(3) An indoor theatre with a fixed seating capacity of at least~~  
35 ~~900 seats located within the City of Stockton in San Joaquin~~  
36 ~~County.~~

37 ~~(4) An outdoor stadium with a fixed capacity of at least 1,200~~  
38 ~~seats within the City of Stockton in San Joaquin County.~~

1     ~~(5) A fully enclosed theater with a fixed seating capacity in~~  
2 ~~excess of 250 seats located in San Joaquin County or Stanislaus~~  
3 ~~County.~~

4     ~~(6) An outdoor football stadium with a fixed seating capacity~~  
5 ~~of at least 2,000 seats located in San Joaquin County.~~

6     ~~(7) An outdoor stadium with a fixed seating capacity in excess~~  
7 ~~of 10,000 seats located in San Luis Obispo County.~~

8     ~~(8) An outdoor stadium with a fixed seating capacity of at least~~  
9 ~~5,000 seats located in San Luis Obispo County.~~

10    ~~(9) A fully enclosed arena with a fixed seating capacity in excess~~  
11 ~~of 8,000 seats located in San Joaquin County.~~

12    ~~(10) An outdoor baseball stadium with a fixed seating capacity~~  
13 ~~of at least 3,500 seats located in San Joaquin County.~~

14    ~~(c) The events may only be conducted pursuant to a written~~  
15 ~~contract between the qualified supplier and the off-sale licensee~~  
16 ~~or its agent.~~

17    ~~(d) Any benefit provided indirectly to on-sale licensees operating~~  
18 ~~at qualified venues as a result of authorized supplier activity~~  
19 ~~described in subdivision (a) shall not be deemed a thing of value,~~  
20 ~~as otherwise prohibited by Section 25500.~~

21    ~~(e) The Legislature finds that it is necessary and proper to~~  
22 ~~require a separation between manufacturing interests, wholesale~~  
23 ~~interests, and retail interests in the production and distribution of~~  
24 ~~alcoholic beverages in order to prevent suppliers from dominating~~  
25 ~~local markets through vertical integration and to prevent excessive~~  
26 ~~sales of alcoholic beverages produced by overly aggressive~~  
27 ~~marketing techniques. The Legislature further finds that the~~  
28 ~~exception established by this section to the general prohibition~~  
29 ~~against tied interests must be limited to its express terms so as not~~  
30 ~~to undermine the general prohibition, and intends that this section~~  
31 ~~be construed accordingly.~~

32    ~~SEC. 2. Due to the unique circumstances concerning the~~  
33 ~~Counties of San Joaquin, San Luis Obispo, and Stanislaus, the~~  
34 ~~Legislature finds and declares that a general statute cannot be made~~  
35 ~~applicable within the meaning of Section 16 of Article IV of the~~  
36 ~~California Constitution. Therefore, this act is necessarily applicable~~  
37 ~~only to the Counties of San Joaquin, San Luis Obispo, and~~  
38 ~~Stanislaus.~~

39    ~~SEC. 3. No reimbursement is required by this act pursuant to~~  
40 ~~Section 6 of Article XIII B of the California Constitution because~~

1 ~~the only costs that may be incurred by a local agency or school~~  
2 ~~district will be incurred because this act creates a new crime or~~  
3 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
4 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
5 ~~the Government Code, or changes the definition of a crime within~~  
6 ~~the meaning of Section 6 of Article XIII B of the California~~  
7 ~~Constitution.~~

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